by a judicial tribunal of competent jurisdiction over the parties to and the subject-matter of the litigation, any party or privy is estopped in any subsequent litigation from disputing or questioning such decision on the merits."

Put in another way,

"To invoke the doctrine of *res judicata* the respondent has to show that there was a former suit between the same parties for the same matter and upon the same cause of action, and also the matter directly and substantially in issue has been heard and finally decided by the court which heard it."

per Ismail Khan J. (as he then was) in *Andavan* v. *Thong Nyik Lin.*[3] In *Parsotan Gir* v. *Narbada Gir,*[4] a Privy Council decision on an appeal from the High Court at Allahabad, their Lordships held that where a former suit between the same parties in the same court and for the same relief resulted in a decree of dismissal, the judgment leaving it open to the plaintiffs to bring a fresh suit and "leaving untouched and undecided" all matters affecting the rights of the parties, such a decree does not constitute *res judicata,* not being a final decision of the suit.

Another decision cited to us which is of assistance is that in *Pople* v. *Evans*[5] wherein it was held that estoppel by *res judicata* could not be maintained merely by reason of the dismissal of an action for want of prosecution, for the estoppel by *res judicata* was intended to be limited to the decision of issues on their merits e.g. when orders were made on trial or on admission or by way of compromise.

In a further written submission made by the 2nd respondent a few days after the hearing of this appeal, to which counsel for the appellant duly replied, our attention was drawn to the recent Court of Appeal decision of *McIlkenny* v. *Chief Constable of the West Midlands & Anor.*[6]

The principles applied therein have been amply enunciated in the authorities we have already considered, and we find nothing in that decision which is of assistance to the respondents' case.

Two other proceedings, Sessions Court (J.B.) Civil Action 146 of 1976, and Johore Bahru Originating Motion No. 46 of 1977 were raised for the first time in 2nd respondent's written submissions, in support of the plea of *res judicata,* but were not raised in the court below as the judgment and records make abundantly clear. We agree with counsel for the appellant that respondents cannot raise these new grounds, regarding which nothing was mentioned in the court below to support their contention that *res judicata* applies.

We are of the view that the two orders in granting the appellant liberty to file a fresh action can only mean that no final decision has been pronounced so as to estop the appellant "in any subsequent litigation from disputing or questioning such decision on the merits", so that the plea of *res judicata* must fail.

We would allow this appeal with costs.

Appeal allowed.

Solicitors: *Subranaicker & Co.; Suppiah & Singh.*

LAND EXECUTIVE COMMITTEE OF FEDERAL TERRITORY v. SYARIKAT HARPER GILFILLAN BERHAD

[F.C. (Raja Azlan Shah Ag. L.P., Syed Othman & Salleh Abas F.JJ.) October 2 & December 22, 1980]

[Kuala Lumpur — Federal Court Civil Appeal No. 151 of 1979]

Administrative Law — Declaration — Application for declaration — Decision of Director of Lands and Mines that applicant must apply for change of category of land use — No appeal lodged against decision — Application for declaration that applicant not required to apply for change of category prior to application for amalgamation and subdivision — Land endorsed for planting of fruit trees — Block of flats erected on land — No jurisdiction to entertain claim for declaration — National Land Code, ss. 53(2), 124(1)(a), 137, 148 & 418.

Land Law — Condition of use of land for planting fruit trees — Flats built on part of land — Sale of part of land with flats — Application for subdivision — Necessity to apply for change of category of land use — National Land Code, ss. 53(2), 124(1)(a), 137, 148 & 418.

In this case the respondents were the registered owners of two pieces of land in the Federal Territory. The condition of use endorsed on the extracts of title was "fruit trees". The respondents agreed to sell a part of the said land on which was erected a block of flats. They applied for amalgamation and subdivision of the land but they were told by the Director of Lands and Mines that they should first apply for a change of category of land use. The respondents did not appeal against the decision of the Director but applied by originating summons for a declaration that upon the true construction of the National Land Code they are not required to apply for a change of category of land use prior to the application for amalgamation and subdivision. The appellants applied to set aside the originating summons on three grounds (a) there was no provision in the National Land Code to enable the Court to grant the declaration sought; (b) the respondents had failed to exercise their right of appeal pursuant to section 418 of the National Land Code and (c) the matter complained of was time-barred by virtue of section 2(a) of the Public Authorities Protection Ordinance, 1948. The learned trial judge dismissed the application of the appellants and they appealed to the Federal Court.

Held: (1) on a proper reading of section 418 of the National Land Code it is clear that Parliament by using plain and unambiguous language intended the right to be exclusive of any other mode of enforcing it. The court therefore has no jurisdiction to entertain the claim sought by the declaration;

(2) in any event, where as in this case the land is held under a land office title and by section 53(2) of the National Land Code the implied category of land use is agricultural and while the continued use of the land for the flats built on it is lawful under the proviso, it is necessary for the proprietor to apply for the imposition of a category of land use, before the issue of title to the sub-divisional portion.

Cases referred to:-

(1) *Baraclough* v. *Brown & Ors.* [1897] A.C. 615.

(2) *A. Subramaniam* v. *S.M.R.M. Muthiah Chetty* [1934] M.L.J. 222.

(3) *Chop Chuah Seong Joo* v. *Teh Chooi Nai & Ors.* [1963] M.L.J. 96.

(4) *Sundaram* v. *Chew Choo Khoon* [1968] 1 M.L.J. 90.

(5) *Metal Industry Employees Union* v. *Registrar of Trade Unions & Ors.* [1976] 1 M.L.J. 220.

(6) *Barnard & Ors.* v. *National Dock Labour Board & Ors.* [1953] 2 Q.B. 18.

(7) *Francis* v. *Yiewsley and West Drayton Urban District Council & Ors.* [1960] A.C. 260.

(8) *Pyx Granite Co. Ltd.* v. *Ministry of Housing and Local Government* [1960] A.C. 260.

(9) *Punton & Anor.* v. *Ministry of Pensions and National Insurance (No. 2)* [1964] 1 All E.R. 448.

(10) *South-East Asia Firebricks Sdn. Bhd.* v. *Non-Metallic*

Mineral Products Manufacturing Employees Union & Ors. [1980] 2 M.L.J. 165.

(11) *Cooper* v. *Wilson* [1937] 2 K.B. 309.

(12) *Dato Menteri Othman bin Baginda & Anor.* v. *Dato Ombi Syed Alwi bin Syed Idrus* [1981] 1 M.L.J. 29.

(13) *Punton* v. *Ministry of Pensions* [1963] 1 All E.R. 275, 279-280.

(14) *Pasmore* v. *Oswaldthistle Urban District Council* [1898] A.C. 387.

(15) *Collector of Land Revenue, Federal Territory* v. *Garden City Development Berhad* [1979] 1 M.L.J. 223.

FEDERAL COURT.

Lim Heng Seng (Federal Counsel) for the appellant.

M.H.K. Lim (*Miss Ginny S.T. Lee* with him) for the respondent.

Cur. Adv. Vult.

Raja Azlan Shah Ag. L.P. (read by Syed Othman F.J.): The respondents are the registered owners of two pieces of land situated in Jalan Ampang Hilir, in the Federal Territory and comprised in E.M.R. Nos. 2119 and 2120 Lots 157 and 225. The condition of use endorsed on the extracts of title is "fruit trees", that is for the planting of fruit trees. On September 2, 1968 they entered into an agreement with two joint purchasers to sell a part of the said land on which is erected a block of three flats. Since the said sale was only of a part of the land, the agreement provided for the transfer of a separate document of title to the purchasers after sub-division. They therefore submitted to the Collector of Land Revenue the necessary forms together with the requisite plan and fees for the purpose of amalgamation and sub-division. The Collector replied to the respondents stating that they should first apply for a change of category of land use pursuant to section 124 of the National Land Code before applying for amalgamation and sub-division under sections 137 and 148 of the Code. There ensued an exchange of letters regarding the ruling of the Collector. In the meantime the respondents' application was referred to the Commissioner of Lands and Mines, Selangor, (now the Director of Lands and Mines, Federal Territory). The Director's reply to the respondents was to the same effect. There was a further exchange of letters. The crux of the matter seems to be the true interpretation of the provisions of the National Land Code, particularly section 124(1)(a).

The respondents by originating summons seek a declaration that upon the true construction of the provisions of the National Land Code they are not required to apply for a change of category of land use under section 124(1)(a) of the Code prior to the application for amalgamation and sub-division. However, they did not appeal against the decision of the Director under section 418 of the National Land Code and even if they had done so they were well out of time.

The appellants applied to set aside the originating summons on three grounds: First, there is no provision in the National Land Code to enable the court to grant the declaration sought; secondly, the respondents had failed to exercise their right of appeal pursuant to section 418 of the Code and, thirdly, the matter complained of was time-barred by virtue of section 2(a) of the Public Authorities Protection Ordinance, 1948.

The learned judge held that apart from the fact that the provisions of the National Land Code did not circumscribe the jurisdiction of the High Court to make binding declarations of right, section 447 of the National Land Code which is a procedural section relating to appeal from the decision of the Director to the Court, read with Order 54A rule 1A of the 1957 Rules of the High Court, makes it quite clear that the court's power in respect of land matters is not conferred exclusively by the National Land Code. He further held that section 418 of the National Land Code which sets the time-limit for an appeal to the High Court does not arise on the ground that the Director had not made any decision on the matter but only "a series of requests, opinions, expressions of advice and threat." In the circumstances he held that as no decision was ever taken, time had not started to run.

For the purpose of this appeal it is only necessary to decide on the availability of declaration in lieu of the statutory right of appeal enacted by section 418 of the National Land Code. We are satisfied that there was a decision from which an aggrieved party may appeal to the High Court under the section. The section reads:

> "418. (1) Any person or body aggrieved by any decision under this Act of the State Commissioner, the Registrar or any Collector may, at any time within the period of three months beginning with the date on which it was communicated to him, appeal therefrom to the court."

It is said by the appellants that the National Land Code being a creature of statute and providing for special procedure relating to appeals on matters pertaining to it, declaratory relief is not available to the appellants. The cases of *Baraclough* v. *Brown & Ors.*,[1] *A. Subramaniam* v. *S.M.R.M. Muthiah Chetty*;[2] *Chop Chuah Seong Joo* v. *Teh Chooi Nai & Ors.*;[3] *Sundaram* v. *Chew Choo Khoon*;[4] and *Metal Industry Employees Union* v. *Registrar of Trade Unions & Ors.*[5] were cited in support of the proposition that when an appeal from an administrative decision is exclusively provided, resort cannot be had to a declaratory relief. In *Baraclough* v. *Brown & Ors., supra,* the House of Lords held that the plaintiffs' choice of the High Court as the forum for the recovery of the cost of removal of a ship sunk in the River Ouse was misconceived as a special procedure for the enforcement of the right was conferred only on the court of summary jurisdiction. In *A. Subramaniam* v. *S.M.R.M. Muthiah Chetty, supra,* declaratory relief was held not to be available to a party dissatisfied with the decision of the Collector where an appeal therefrom was provided under section 237 of the National Land Code to the court. In *Chop Chua Seong Joo* v. *Teh Chooi Nai & Ors., supra,* declaratory relief was not granted since the Control of Rent Ordinance 1956 expressly provided for a right of appeal to the High Court. In *Sundaram* v. *Chew Choo Khoon, supra,* it was held that the only recourse of a party dissatisfied by the decision of the Collector under section 37 of the National Land Code was to appeal against the decision to the court and

declaratory suit was misconceived. In *Metal Industry Employees* v. *Registrar of Trade Unions & Ors., supra,* an application for a declaration to show that on a proper construction of section 2(2) of the Trade Unions Ordinance 1959, the Registrar of Trade Unions had no power to decide on the eligibility of any group of workers to join the union was dismissed by this court on the ground that it lacked jurisdiction as the statutory remedy of appeal to the Minister excluded the declaratory jurisdiction of the High Court.

On the other hand the respondents contend that there is nothing in the provisions of the National Land Code to prevent them from coming to the court to seek declaratory relief; clear words are necessary to oust the jurisdiction of the court. The following cases were cited: *Barnard & Ors.* v. *National Dock Labour Board & Ors.*;[6] *Francis* v. *Yiewsley and West Drayton Urban District Council & Ors.*;[7] *Pyx Granite Co. Ltd.* v. *Ministry of Housing and Local Government*;[8] *Punton & Anor.* v. *Ministry of Pensions and National Insurance (No. 2)*;[9] *South East Asia Fire Bricks Sdn. Bhd.* v. *Non-Metallic Mineral Products Manufacturing Employees Union & Ors.*[10]

In *Barnard's* case, *supra,* the local board had no authority to delegate its quasi-judicial disciplinary functions to the port manager who had purportly suspended the plaintiffs from work, the original notices of suspension were therefore a nullity, and the decisions of the appeal tribunal in affirming the suspension were equally a nullity. Although *certiorari* was the appropriate remedy and the plaintiffs could have invoked it well within time, there was no way in which they could have discovered that their suspension was a nullity, as there was no discovery and inspection in proceedings by way of *certiorari.* That left the plaintiffs without a remedy, and it was in those special circumstances that the court took the line that it had the power to grant a declaration in order to prevent an injustice to the plaintiffs. That led Denning L.J. to say at page 41: "I know of no limit to the power of the court to grant a declaration except such limit as it may in its discretion impose upon itself." Equally in *Cooper* v. *Wilson*[11] special circumstances existed which rendered *certiorari* inefficacious; the plaintiff could not have claimed by way of *certiorari* the sum which the Watch Committee had wrongfully deducted from his pay. A declaration was granted in lieu of *certiorari.*

In *Francis* v. *Yiewsley, supra,* the court declared the enforcement notice requiring the plaintiff to cease using the land as a caravan park invalid as it was based upon a fundamentally false basis of fact; the fact that he had failed to appeal against the enforcement notice to a court of summary jurisdiction did not bar him from applying to the court for a declaratory relief as the indications in section 23(4) of the Town and Country Planning Act, 1947, did not contain clear words to that effect. In *Pyx Granite* v. *Ministry of Housing, supra,* the plaintiff successfully sought declaration that they were not required to seek a local council's approval to develop their land, although there was an alternative statutory right of appeal to the local planning authority. The House of Lords held that the court's jurisdiction could not be taken away in that indirect manner. Viscount Simonds said, at page 286:

> "It is a principle not by any means to be whittled down that the subject's recourse to Her Majesty's courts for the determination of his rights is not to be excluded except by clear words. That is, as McNair J. called it in *Francis* v. *Yiewsley and West Drayton Urban District Council* (1957) 2 Q.B. 136, a 'fundamental rule' from which I would not for my part sanction any departure. It must be asked, then, what is there in the Act of 1947 which bars such recourse."

In *Punton* v. *Ministry of Pensions and National Insurance (No. 2), supra,* the court held that a bare declaration could not quash a valid but erroneous decision, that is, an error of law within jurisdiction. In that case the plaintiffs lost their employment as a result of strike action by some of their fellow-workers. Their application for unemployment benefits was rejected by the National Insurance Commissioner on the ground that they had not adduced sufficient evidence to satisfy him that they were not supporting the strike. They sought declarations that on the facts as found by the Commissioner he had come to a wrong decision in point of law. The court held that if it made a bare declaration, then the Commissioner's decision would still subsist, and as long as the Commissioner's decision stands, "it would be out of harmony with all authority to have two contrary decisions between the same parties on the same issues obtained by different procedures." The court had no jurisdiction to impugn such a decision by merely granting a bare declaration.

South East Asia Fire Bricks, supra, was concerned with the provisions of section 29(3)(a) of the Industrial Relations Act 1967 — whether *certiorari* would lie to quash an award of the Industrial Court for error of law on the face of the record. It is not in point.

Thus it can be seen that the modern use of declaratory judgment has already developed into the most important means of ascertaining the legal powers of public authorities in the intricate mixture of public and private enterprise which is becoming a distinctive feature of our life. But we must add a warning note that its use must not be carried too far. The power to grant declaratory judgment in lieu of the prerogative orders or statutory reliefs must be exercised with caution. The power must be exercised "sparingly", with "great care and jealousy". I said in *Dato Menteri Othman bin Baginda & Anor.* v. *Dato Ombi Syed Alwi bin Syed Idrus*[12] that the power to grant a declaration should be exercised with a proper sense of responsibility and after a full realization that judicial pronouncements ought not to be issued unless there are circumstances that properly call for their making. Beyond that there is no legal inhibition to the grant of declaratory judgment. That is consistent with the attitude of the courts in this country. To some it may appear that justice is being denied by a timid and conservative approach. They are wrong. Consistency makes for certainty, and this court being at the centre of the legal system in this country, is responsible for the stability, the consistency and the predictability of the administration of law.

The present appeal must be determined upon a

consideration of the terms of the National Land Code. As was stated by Diplock L.J. in *Punton* v. *Ministry of Pensions*[13]:

"I do not wish it to be thought that, without further careful examination, I necessarily assent to the proposition that a declaration lies as an alternative remedy wherever *certiorari* would lie. I think that it must depend or may at any rate depend, on the statutory terms in which jurisdiction is conferred on the inferior tribunal and on the statutory effect of its decision."

First of all we have to see the nature of the claim. It is an action for a declaration that conversion is not necessary before sub-division. That is a question of law by virtue of a statutory provision in section 124 of the National Land Code. If the relevant authority commits an error in the interpretation of the section, then an aggrieved party has a right of appeal to the High Court under section 418 of the Code. Parliament has on the ground of public policy found that that is a just and necessary right. But in the same section Parliament has also enacted a special procedure of enforcing that right. If the right had been simply created and no specific method of enforcing it had been provided for, the existing law itself would have provided a method through the court already invested with jurisdiction to determine a claim of that nature. But a specific method having been created by providing a time-limit within which the right may be pursued, it becomes a question whether that method is exclusive or not. That depends, not upon any rigid rule, but upon the intention of Parliament appearing from the Code.

As a general rule where a statute creates a new obligation and provides a special mode of enforcing it, no other court has jurisdiction to enforce that obligation. The case generally referred to, as establishing that rule is *Pasmore* v. *Oswaldtwistle Urban District Council.*[14] We quote from the speech of the Earl of Halsbury L.C.:

"The principle that where a specific remedy is given by a Statute, it thereby deprives the person who insists upon a remedy of any other form of remedy than that given by the Statute, is one which is very familiar and which runs through the law. I think Lord Tenterden accurately states that principle in the case of *Doe* v. *Bridges* (1 B. & Ad., 847, at p. 859). He says: 'where an Act creates an obligation and enforces the performance in a specified manner, we take it to be a general rule that performance cannot be enforced in any other manner.' The words which the learned Judge, Lord Tenterden, uses there appear to be strictly applicable to this case. The obligation which is created by this Statute is an obligation which is created by the Statute and by the Statute alone. It is nothing to the purpose to say that there were other Statutes which created similar obligations, because all those Statutes are repealed; you must take your stand upon the Statute in question, and the Statute which creates the obligation is the Statute to which one must look to see if there is a specified remedy contained in it. There is a specified remedy contained in it, which is an application to the proper Government department."

In *Baraclough* v. *Brown & Ors., supra,* Lord Herschell said (page 619):

"The only right conferred is 'to recover such expenses from the owner of such vessel in a court of summary jurisdiction.' I do not think the appellant can claim to recover by virtue of the Statute, and at the same time insist upon doing so by means other than those prescribed by the Statute which alone confers the right."

Lord Watson said (page 622):

"The right and the remedy are given *uno flatu,* and the one cannot be dissociated from the other. By these words the legislature has, in my opinion, committed to the summary court exclusive jurisdiction, not merely to assess the amount of expenses to be repaid to the undertaker, but to determine by whom the amount is payable; and has therefore, by plain implication, enacted that no other court has any authority to entertain or decide these matters."

We now ask ourselves, what is there in the National Land Code which bars declaratory relief. Section 418 of the Code must now be looked at. If on a proper reading of it leads one to the conclusion that it is the intention of Parliament to create the right absolutely and independently of any specific form of remedy, the respondents' action is well maintained. If on the other hand the proper interpretation is that the right and the remedy are *uno flatu,* that they are not mutually exclusive, that they are part and parcel of the remedy, then the action is misconceived.

Reading section 418 of the Code, we are satisfied that the latter is the correct interpretation. Having regard to the special provision for limiting the time within which to enforce the right, the indications are that Parliament has by using plain and unambiguous language intended the right to be exclusive of any other mode of enforcing it. The time-limit is the foundation of the right given in the section. It is in the highest degree improbable that the period of three months as a limitation would have been inserted if an indefinite period were intended to be given. The period of three months is obviously for the purpose of preventing stale claims. If the contrary is sustainable, then the respondents are allowed to seek to enforce their statutory right by a method other than that prescribed by the Code creating it.

For these reasons we are of the view that the court has no jurisdiction to entertain the claim sought by the declaration and the appeal must be allowed with costs here and below.

Although we feel compelled to allow the appeal on the ground indicated, it may be satisfactory to the parties to know that, in the light of the recent decision of this court, which is binding on the High Court, that is, the case of *Collector of Land Revenue, Federal Territory* v. *Garden City Development Berhad,*[15] we arrived at the conclusion that the same result must have followed even if the question of jurisdiction had been determined the other way. Unfortunately the attention of the High Court was not drawn to that case, neither party alluding to it. The facts there were not greatly dissimilar. The landowners held a Registry title of a piece of town land. A substantive house had been built on the land. The landowners desired to erect and they did erect a more substantial building. But there was no category of land use imposed on the title. It is however the clear intention of the National Land Code that the use of land in the country should be classified into one of three uses, viz. agricultural, building or industrial. To achieve uniformity of classification, it has to make specific provisions for the conversion of land alienated before the commencement of the Act, i.e., the Code, into the system. These provisions are in sections 53 and 54. The relevant section for our purpose is the former section. Other than land which immediately before the commencement of the Act is

subject to an express condition requiring its use for a particular purpose, all land which at the commencement of the Act is country land or town or village land held under Land Office title becomes subject at the commencement of the Act to an implied condition that it shall be used for agricultural purposes only and all other land that is held under Registry title shall become subject to an implied condition, expressed, curiously but purposely, in a negative manner "that it shall be used neither for agricultural nor for industrial purposes." Express provisions exist in the section for the continued use of the land to which it had been put prior to the commencement of the Act. Such continued use would not be unlawful.

From this imposition of a category of use by statutory implication, it follows that whenever it is desired to use the land differently from that to which the land is for the time being subject to (in the case of land alienated before the commencement, it would be the implied condition imposed by section 53), the proprietor must apply for alteration of the category of land use under the requirements of section 124. This court accordingly held in *Garden City, supra,* that since the title was "neither for agricultural nor for industrial purposes" and there is no necessary consequence that it was for the only other purpose, viz. for building purposes, it was incumbent on the proprietor to apply under the second part of section 124(a) for the imposition, not the alteration, of a category of use to which the land would be put.

Where the land as in this case is held under a Land Office title and by section 53(2), the implied category of land use is agricultural and while the continued use of the land for the flats built on it is lawful under the proviso, the issue of title to the sub-divisional portion, sought by the respondents, cannot continue a use not known to the National Land Code or delay or frustrate the implied system of land use by any contention that the new title does not need to have imposed on it one of the three recognized categories of land use.

Order accordingly.

Solicitors: *Shearn Delamore & Co.*

FUNG KEONG RUBBER MANUFACTURING (M) SDN. BHD. v. LEE ENG KIAT & ORS.

[F.C. (Raja Azlan Shah C.J. (Malaya), Syed Othman & Salleh Abas F.JJ.) October 3 & December 22, 1980]
[Kuala Lumpur — Federal Court Civil Appeal No. 150 of 1979]

Industrial Law — Dismissal of workmen not members of trade union — Representations to Director-General to be made within one month of dismissal — Representations made after one-month — Reference by Minister to Industrial Court — Jurisdiction — Prohibition issued — Industrial Relations Act, 1967, s. 20(1).

Administrative Law — Prohibition — Reference by Minister to Industrial Court — Jurisdiction — Delay in applying for prohibition — Application not too late so long as something left for it to operate upon — Industrial Relations Act, 1967, s. 20(1).

In this case the appellants had dismissed the 1st and 2nd respondents from their employment on November 17, 1973 on the grounds that they were suspected of being involved in theft of property at the appellants' factory premises. Subsequently in June 1976 the two respondents were charged in court but were acquitted. The two respondents thereupon applied to the appellants to re-employ them but the appellants refused. The respondents then made representations to the Director-General of Industrial Relations and when efforts at a settlement failed the Director notified the matter to the Minister, who referred the matter to the Industrial Court on September 30, 1976. The Industrial Court was invited to determine the preliminary issue whether it had jurisdiction and it held in the circumstances it could hear the claim. The appellants applied to the High Court for an order of prohibition but this was refused. The appellants thereupon appealed to the Federal Court.

Held: (1) under section 20(1) of the Industrial Relations Act, 1967, a workmen who claims re-instatement for wrongful dismissal must present his claim within one month of the dismissal. If the claim is not made within one month, the Industrial Court has no jurisdiction to consider the claim;

(2) in this case as the claim was made well outside the time limit the court could interfere with the exercise of the Minister's discretion in referring the matter to the Industrial Court and the Industrial Court should have held that it was wrongly conferred with jurisdiction;

(3) although there was a delay in the application for prohibition, so long as there remained something to which prohibition can apply, some act which the industrial court if not prohibited may do in excess of its jurisdiction, prohibition may lie.

Cases referred to:-

(1) *Vine* v. *National Dock Labour Board* [1957] A.C. 488, 500, 507.

(2) *Francis* v. *Municipal Councillors of Kuala Lumpur* [1962] 1 W.L.R. 1411; [1962] M.L.J. 407.

(3) *Wall's Meat Co. Ltd.* v. *Khan* [1979] I.C.R. 52.

(4) *National Union of Hotel, Bar and Restaurant Workers* v. *Minister of Labour and Manpower* [1980] 1 M.L.J. 189.

(5) *Estate and Trust Agencies (1927) Ltd.* v. *Singapore Improvement Trust* [1937] A.C. 898; [1937] M.L.J. 161.

(6) *In re London Scottish Permanent Building Society* (1893) 63 L.J. (Q.B.) 112, 113.

(7) *Rex* v. *North, ex parte Oakey* [1927] 1 K.B. 491.

The following cases were also referred to in argument:

C. Devan Nair v. *Yong Kuan Teik* [1967] 2 A.C. 31, [1967] 1 M.L.J. 261; *South-East Asia Fire Bricks Sdn. Bhd.* v. *Non-Metallic Mineral Products Manufacturing Employees Union & Ors.* [1980] 2 M.L.J. 165; *Minister of Labour and Manpower & Anor.* v. *Wix Corporation South-East Asia Sdn. Bhd.* [1980] 2 M.L.J. 248; *Kesatuan Pekerja-Pekerja Kenderaan Sri Jaya* v. *Industrial Court & Ors.* [1970] 1 M.L.J. 78; *Selangor Omnibus Co. Ltd.* v. *Transport Worker's Union, Malaya & Ors.* [1968] 1 M.L.J. 242.

FEDERAL COURT.

V.T. Nathan for the appellants.

G.T. Rajan for the 1st respondents.

T. Thomas for the 2nd respondent.

Cur. Adv. Vult.

Raja Azlan Shah C.J. (Malaya) (read by Syed Othman F.J.): On December 24, 1976 and June 16, 1977 an industrial court assumed jurisdiction to hear the complaint of Lee Eng Kiat (respondent 1) and S. Balasuppramaniyam (respondent 2), the chief security guard and security guard respectively, that they had been dismissed without just cause or excuse by their employer, the appellants. It assumed jurisdiction on the ground that section 20(1) of the Industrial Relations Act, 1967 (Act 177) does not impose an absolute obligation on a workman to make the representation within one month of the dismissal.